IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4178 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

INDIRABEN P THANDAPANI

Appearance:

1. Special Civil Application No. 4178 of 1996
MR JC SHETH for Petitioner No. 1
MR PRADYUMAN B BHATT for Respondent No. 1-2
MR HM PARIKH for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 17/06/2004

ORAL JUDGEMENT

1. This petition has been preferred for quashing and setting aside the judgment and order dated 3-4-1996 delivered by the Motor Accident Tribunal, Ahmedabad (Rural) below the application exh. 14 in Motor Accident Claim Petition No.1986 of 1991, whereby the Tribunal directed the respondents to pay Rs.25,000/- on the basis of "No Fault Liability".

2. The learned advocate for the petitioner contended that as the railway engine which is running on the railway track is not a motor vehicle within the meaning of Section 2 (28) of the Motor Vehicles Act, 1988, the claim application of the claimants was not maintainable. It has further been contended that when the claim application itself was not maintainable, the learned Tribunal has no jurisdiction to pass the order against the petitioner for payment of Rs.25,000/- together with interest thereon at the rate of 12% p.a. from the date of application till realisation thereof on the principle of "No Fault Liability" as provided under Section 140 of the Motor Vehicles Act.

3. This Court cannot be oblivious of the fact that it is a case where the Tribunal has not decided anything finally on the basis of the principle of "No Fault Liability". It cannot be said that the Tribunal has adjudicated the question of liability of the petitioner to pay compensation to the claimants for this accident. The matter is still open to the petitioner to be agitated. In the main proceedings, the Tribunal, will frame issue and after recording evidence of the parties and hearing their learned advocate, will decide the matter. It is only at this stage, the Tribunal has passed the order of interim compensation and at this stage, all these niceties and technicalities of law may not be gone into. Otherwise also, in case ultimately the petitioner succeeds in the main application in establishing that the railway engine does not fall under the definition of motor vehicles as defined under Section 2 (28) of the Motor Vehicles Act, 1988, whatever amount paid by it in pursuance of the impugned order may be made first charge on the amount of compensation to be paid to the claimants and in view of this fact, the petitioner will otherwise not suffer any loss or in the case the impugned order, if allowed to stand, will not occasion failure of justice or will cause any injury. In these very proceedings, this issue has to be gone into and ultimately on success of the petitioner on this issue, the Tribunal shall take care of the situation and pass

necessary orders in accordance with law so that the petitioner does not suffer any loss. It is not in dispute that whatever amount is paid to the claimants way of interim compensation is to be deducted from the final amount awarded as compensation in the claim applications. So, the Tribunal can order for deduction of this amount which is paid by the petitioner in pursuance of the impugned order to the claimants from final amount of compensation. The party against whom final order is passed cannot have any grievance in passing such order by the Tribunal on success of the petitioner in its defence nor the claimants can raise any objection.

4. In the result, the present Special Civil Application fails and the same is dismissed. Rule is discharged. Interim relief granted earlier by this Court stands vacated. However, it is made clear that in case the amount of Rs.25,000/together with interest has been deposited by the petitioner and it has not been disbursed to the claimants, the Tribunal shall invest the same in the long term Fixed Deposit and the claimants shall be entitled for withdrawal of the amount of interest monthly accruing on the amount of Fixed Deposit. The parties are directed to bear their own costs.

(D.N. Patel, J.)

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